

HOUSE JUDICIARY COMMITTEE SUBSTITUTE FOR
HOUSE BILL 145

48TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2008

AN ACT

RELATING TO TAXATION; CREATING THE SPORTS AND RECREATION
FACILITY FINANCING ACT; PROVIDING A MECHANISM TO GENERATE FUNDS
TO DESIGN, CONSTRUCT, EQUIP, FURNISH, LANDSCAPE, OPERATE AND
MAINTAIN A SPORTS AND RECREATION FACILITY; DECLARING AN
EMERGENCY.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. SHORT TITLE.--This act may be cited as the
"Sports and Recreation Facility Financing Act".

Section 2. DEFINITIONS.--As used in the Sports and
Recreation Facility Financing Act:

A. "local governing body" means the governing body
of a qualified municipality authorized pursuant to the
provisions of the Sports and Recreation Facility Financing Act
to impose sports and recreation facility fees;

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1 B. "lodging facility" means a hotel, motel or motor
2 hotel; a bed and breakfast facility; an inn; or any other
3 facility offering rooms for payment of rent or other
4 consideration;

5 C. "qualified municipality" means an incorporated
6 municipality with a population of more than one thousand but
7 less than one thousand one hundred that is located in a class B
8 county with a population of greater than fourteen thousand but
9 less than fifteen thousand according to the most recent federal
10 decennial census;

11 D. "room" means a unit of a lodging facility, such
12 as a hotel room;

13 E. "sports and recreation facility fee" means the
14 fee imposed by a local governing body pursuant to the Sports
15 and Recreation Facility Financing Act on vendees for the use of
16 lodging facilities;

17 F. "vendee" means a person who rents or pays
18 consideration to a vendor for use of a room; and

19 G. "vendor" means a person or the person's agent
20 who furnishes rooms for occupancy for consideration.

21 Section 3. AUTHORIZATION--SPORTS AND RECREATION FACILITY
22 FEE IMPOSITION--LOCAL GOVERNING BODY.--A local governing body
23 may impose a sports and recreation facility fee if the local
24 governing body has enacted an ordinance to impose a sports and
25 recreation facility fee and the ordinance has been approved by

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1 referendum as required in the Sports and Recreation Facility
2 Financing Act.

3 Section 4. IMPOSITION OF SPORTS AND RECREATION FACILITY
4 FEE--USE OF PROCEEDS--REFERENDUM.--

5 A. A local governing body may impose by ordinance a
6 fee on the use of a room located within a qualified
7 municipality. The fee may be referred to as the "sports and
8 recreation facility fee". The amount of the sports and
9 recreation facility fee shall not exceed two and four-tenths
10 percent of the gross room charge for each day the room is
11 occupied by a vendee. The sports and recreation facility fee
12 shall be imposed for a period of not more than twenty years
13 from the effective date of the ordinance imposing the sports
14 and recreation facility fee.

15 B. An ordinance imposing the sports and recreation
16 facility fee shall go into effect only after a referendum on
17 the question of imposing the sports and recreation facility fee
18 is held and a majority of the qualified electors voting on the
19 question votes in favor of imposition of the sports and
20 recreation facility fee.

21 C. The local governing body shall adopt a
22 resolution calling for an election, to be held within
23 seventy-five days of the date the ordinance is adopted, on the
24 question of imposing the sports and recreation facility fee.

25 D. The question of imposing the sports and

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1 recreation facility fee may be submitted to the voters as a
2 separate question at a general election or at a special
3 election called for that purpose by the local governing body.
4 If a special election is called, it shall be called, conducted
5 and canvassed in substantially the same manner as provided by
6 law for municipal elections. If a majority of the voters
7 voting on the question approves the question to impose the
8 sports and recreation facility fee, the ordinance shall become
9 effective in accordance with applicable law. If the question
10 of imposing the sports and recreation facility fee fails, the
11 local governing body shall not again propose the imposition of
12 the sports and recreation facility fee for a period of one year
13 from the date of the election.

14 E. The question of imposing the sports and
15 recreation facility fee shall include the uses for which the
16 fee will be used.

17 F. A sports and recreation facility fee imposed
18 pursuant to this section shall be reviewed by the local
19 governing body annually.

20 G. A local governing body shall not decrease the
21 sports and recreation facility fee while revenue bonds to which
22 the revenue of the sports and recreation facility fee is
23 pledged remain outstanding.

24 H. A local governing body shall dedicate the
25 revenue from the sports and recreation facility fee at the time

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1 that the ordinance imposing the fee is enacted and limit the
2 use of the revenue generated by the fee to the following:

3 (1) the design, construction, equipping,
4 furnishing, landscaping and other costs associated with the
5 development of a sports and recreation facility located within
6 the qualified municipality;

7 (2) payments of principal, interest or prior
8 redemption premiums due in connection with and any other
9 charges pertaining to revenue bonds authorized by the Sports
10 and Recreation Facility Financing Act, including payments into
11 a sinking fund or reserve fund required by the revenue bond
12 ordinance;

13 (3) costs of collecting and otherwise
14 administering the sports and recreation facility fee; provided
15 that the administrative costs shall not be paid if there are
16 current payments due pursuant to Paragraph (2) of this
17 subsection, and provided that no more than ten percent of the
18 revenue collected in a fiscal year shall be used to pay
19 administrative costs;

20 (4) operation costs of the sports and
21 recreation facility designed, constructed, equipped, furnished,
22 landscaped or otherwise developed with funding generated
23 pursuant to the Sports and Recreation Facility Financing Act;
24 and

25 (5) payments into a capital reserve fund

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1 established for the future payment for capital maintenance and
2 improvements and equipment replacement costs of the sports and
3 recreation facility located within the qualified municipality;
4 provided that no payments shall be made pursuant to this
5 paragraph if there are current payments due pursuant to
6 Paragraph (2) of this subsection.

7 Section 5. EXCEPTIONS.--The sports and recreation
8 facility fee shall not apply:

9 A. if the local governing body by ordinance exempts
10 lodging facilities whose maximum daily room charge is less than
11 an amount stated in the ordinance;

12 B. to rooms at institutions of the federal
13 government, the state or any political subdivision of the
14 federal government or the state;

15 C. to rooms at religious, charitable, educational
16 or philanthropic institutions or other nonprofit organizations,
17 including rooms at summer camps operated by such organizations;

18 D. to clinics, hospitals or other medical
19 facilities;

20 E. to privately owned and operated convalescent
21 homes or homes for the aged, infirm, indigent or chronically
22 ill; or

23 F. if the vendor does not offer at least three
24 rooms at the vendor's lodging facility.

25 Section 6. COLLECTION OF SPORTS AND RECREATION FACILITY

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1 FEE.--

2 A. A vendor providing rooms in a qualified
3 municipality in which the local governing body has imposed a
4 sports and recreation facility fee shall collect the fee on
5 behalf of the local governing body and shall remit the fees
6 collected to the local governing body on or before the twenty-
7 fifth day of the month following the month in which the fees
8 are collected along with the occupancy tax also collected.

9 B. The sports and recreation facility fee shall be
10 collected by a vendor from vendees as a room surcharge at the
11 time that rent is collected by the vendor and shall be
12 accounted for separately from the rent fixed by the vendor for
13 the rooms.

14 Section 7. AUDIT OF VENDORS.--A local governing body
15 imposing a sports and recreation facility fee shall include
16 verification of the collection of the correct sports and
17 recreation facility fee in any audit of a vendor conducted
18 pursuant to Section 3-38-17.1 NMSA 1978.

19 Section 8. FINANCIAL REPORTING.--The chief financial
20 officer of a local governing body assessing a sports and
21 recreation facility fee shall report to the local government
22 division of the department of finance and administration on a
23 quarterly basis any expenditure of sports and recreation
24 facility funds.

25 Section 9. ENFORCEMENT.--An action to enforce the Sports
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1 and Recreation Facility Financing Act may be brought by:

2 A. the municipal attorney of the qualified
3 municipality, or a person designated by the qualified
4 municipality, as approved by the local governing body; or

5 B. a vendor who is collecting the proceeds of a
6 sports and recreation facility fee in the county in which the
7 qualified municipality is located.

8 Section 10. COLLECTION OF DELINQUENCIES.--

9 A. A local governing body shall by ordinance
10 provide that a vendor is liable for the payment of the proceeds
11 of sports and recreation facility fees that the vendor failed
12 to remit to the local governing body. Failure of the vendor to
13 collect the fee is not cause for the local governing body to
14 forgive sports and recreation facility fees due and owed by the
15 vendor. The ordinance shall provide for a civil penalty for
16 each occurrence of failure to remit sports and recreation
17 facility fees in the amount due. The civil penalty shall be an
18 amount equal to the greater of ten percent of the amount that
19 was not duly remitted to the local governing body or one
20 hundred dollars (\$100).

21 B. The local governing body may bring an action in
22 the district court of the judicial district in which the
23 qualified municipality is located for collection of amounts
24 due, including, without limitation, interest on the amounts due
25 on the unpaid principal at a rate not exceeding one percent per
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1 month, the costs of collection and reasonable attorney fees
2 incurred in connection with the court action to collect the
3 delinquent sports and recreation facility fees.

4 Section 11. LIEN FOR SPORTS AND RECREATION FACILITY FEE
5 PAYMENT--CERTIFICATE OF LIEN.--

6 A. The sports and recreation facility fee assessed
7 by a local governing body constitutes a lien in favor of that
8 local governing body upon the personal and real property of the
9 vendor providing lodging facilities in that qualified
10 municipality. The lien may be enforced as provided in Sections
11 3-36-1 through 3-36-7 NMSA 1978.

12 B. Under process or order of the court, a person
13 shall not sell the property of a vendor without first
14 ascertaining from the clerk or treasurer of the qualified
15 municipality in which the vendor is located the amount of
16 sports and recreation facility fees due. Sports and recreation
17 facility fees due to the local governing body shall be paid
18 from the proceeds of the sale consistent with the lien
19 priorities set forth in Sections 3-36-1 through 3-36-7 NMSA
20 1978.

21 C. The clerk or treasurer of the qualified
22 municipality shall furnish a certificate of lien to a person
23 applying for a certificate showing the amount of all liens in
24 the records of the qualified municipality against any vendor
25 pursuant to the Sports and Recreation Facility Financing Act.

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1 Section 12. ORDINANCE REQUIREMENTS.--The ordinance
2 imposing a sports and recreation facility fee or any ordinance
3 amending the imposition of a sports and recreation facility
4 fee:

5 A. shall state:

6 (1) the rate of the sports and recreation
7 facility fee to be imposed;

8 (2) the time, place and method for the payment
9 of the sports and recreation facility fee proceeds to the local
10 governing body;

11 (3) the accounts and other records to be
12 maintained in connection with the sports and recreation
13 facility fee;

14 (4) a procedure for making refunds and
15 resolving disputes relating to the sports and recreation
16 facility fee;

17 (5) the procedures for preservation,
18 destruction, inspection and investigation of records;

19 (6) vendor audit requirements;

20 (7) applicable civil penalties;

21 (8) a procedure for liens and sales to satisfy
22 those liens;

23 (9) that the ordinance is not effective until
24 the imposition of the sports and recreation facility fee has
25 been approved pursuant to a referendum in which a majority of

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1 voters voting within the qualified municipality votes in favor
2 of imposition of the sports and recreation facility fee; and

3 (10) that the sports and recreation facility
4 fee shall be imposed for a period not exceeding twenty years
5 from the effective date of the ordinance imposing the sports
6 and recreation facility fee; and

7 B. shall provide other rights, privileges, powers,
8 immunities and details relating to the collection of the sports
9 and recreation facility fee and the remittance of the proceeds
10 of that fee to the local governing body.

11 Section 13. REVENUE BONDS.--

12 A. Revenue bonds may be issued at any time by a
13 qualified municipality that has imposed a sports and recreation
14 facility fee to defray wholly or in part the costs authorized
15 by the Sports and Recreation Facility Financing Act. The
16 revenue bonds may be payable from, and payment may be secured
17 by, a pledge of and lien on the revenue derived from:

18 (1) the proceeds of the sports and recreation
19 facility fee of the qualified municipality dedicated to the
20 payment of revenue bonds for a sports and recreation facility
21 in the qualified municipality;

22 (2) a sports and recreation facility to which
23 the bonds pertain, after provision is made for the payment of
24 the operation and maintenance expenses of the sports and
25 recreation facility;

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1 (3) that portion of the proceeds of the
2 occupancy tax of the qualified municipality available for
3 payment of revenue bonds pursuant to Section 3-38-23 NMSA 1978;

4 (4) any other legal available revenues of the
5 qualified municipality; or

6 (5) a combination of revenues from the sources
7 designated in this subsection.

8 B. The bonds shall bear interest at a rate or rates
9 as authorized in the Public Securities Act, and the first
10 interest payment may be for any period authorized in the Public
11 Securities Act.

12 C. Except as otherwise provided in the Sports and
13 Recreation Facility Financing Act, revenue bonds authorized
14 pursuant to that act shall be issued in accordance with the
15 provisions of Sections 3-31-2 through 3-31-6 NMSA 1978.

16 Section 14. REFUNDING BONDS.--

17 A. A qualified municipality having issued revenue
18 bonds may issue refunding bonds payable from pledged revenues
19 authorized for the payment of the revenue bonds at the time of
20 the refunding or at the time of the issuance of the bonds being
21 refunded, as the local governing body may determine, regardless
22 of whether the revenue sources or the pledge of the revenues or
23 both are modified at the time of the refunding.

24 B. Refunding bonds may be issued for the purpose of
25 refinancing, paying and discharging all or a part of

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1 outstanding bonds of one or more outstanding bond issues:

2 (1) for the acceleration, deceleration or
3 other modification of the payment of the obligations, including
4 capitalization of interest that is in arrears or about to
5 become due for any period not exceeding one year from the date
6 of the refunding bonds;

7 (2) for the purpose of reducing interest costs
8 or effecting other economies;

9 (3) for the purpose of modifying or
10 eliminating restrictive contractual limitations pertaining to
11 the issuance of additional bonds or otherwise concerning the
12 outstanding bonds; or

13 (4) for any combination of the purposes set
14 forth in this subsection.

15 C. The interest on a bond refunded shall not be
16 increased to a rate in excess of the rate authorized in the
17 Public Securities Act and shall be paid as authorized in that
18 act.

19 D. Refunding bonds for any other purpose permitted
20 by the Sports and Recreation Facility Financing Act may be
21 issued separately or issued in combination in one series or
22 more.

23 E. Except as otherwise provided in the Sports and
24 Recreation Facility Financing Act, refunding bonds authorized
25 in that act shall be issued in accordance with the provisions

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1 of Sections 3-31-10 and 3-31-11 NMSA 1978.

2 Section 15. EMERGENCY.--It is necessary for the public
3 peace, health and safety that this act take effect immediately.

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